IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.221 Of 2000.

Date of decision: July 12th, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Virender Singh and another.

……. Respondents.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.C.B. Singh, Dy. Advocate General.

For the respondents: Mr.Bimal Gupta Advocate.

Surinder Singh, J (oral):

The respondents were put in trial before the trial court, under Sections 353, 332 read with Section 34 of the Indian Penal Code allegedly giving beatings to the Driver, Shyam Lal (PW4) of H.R.T.C. The respondents were acquitted in Criminal CaseNo.37/2 of 1997, decided on 16.4.1999.The State-appellant felt aggrieved by the impugned judgment of acquittal. Consequently filed the present appeal on the ground that the learned trial court did not appreciate the evidence of the prosecution correctly, which resulted into wrong findings.

Whether reporters of local Papers may be allowed to see the judgment? Yes .

The leave to appeal was granted on 4.5.2000. Now the matter has been finally heard.

Mr. C.B. Singh, learned Deputy Advocate General has vehemently argued that the complainant has supported the case of the prosecution, which is corroborated by the independent witnesses, therefore, the judgment of acquittal is incorrect, whereas, on the other hand, Shri Bimal Gupta, learned counsel for the respondents while supporting the judgment of acquittal has led me through the evidence on record and submitted that the view taken by the trial court is born out from the evidence o record, therefore, the appeal merits dismissal.

I have considered the rival contentions of the parties and have examined the record.

In brief the case of the prosecution is that on 23.11.1997, PW Shyam Lal was a Driver in H.R.T.C. Bus bearing registration No.HP-18-3546. Shri Jaivinder Singh (PW5) was the conductor. The bus returned from village Vasni at 6 a.m. When it reached near Bhelan around 9 a.m., it was overcrowded. The bus did not stop at Bus stop Bhelan, on the signal given by the passengers, standing there, but it was taken by the driver about 10/15 meters ahead. On this, the respondents, who are the real brothers came to the spot and dragged the driver Shyam Lal and gave him thrashings. The driver raised hue and cry. PW5 Jaivinder Singh, PW6, Vijay Singh and PW7 Bishan Singh came to the spot and rescued the driver from the clutches of the respondents. Police was informed telephonically. ASI Duni Chand visited the spot, recorded the

statement of the driver, on the basis of which FIR Ext.PW8/A was registered. Police prepared site plan Ext.PW10/A. Complainant Shyam Lal was medically examined. PW-1 Dr.Birbal Brij found some injury on his person and he was advised X-ray. Dr. Narang, Radiologist took the X-ray and opined that there was no fracture. The Police took duty abstract of the Driver in possession and after completing the investigation, challan was put in the court under the aforesaid Sections. The charges were put to the respondents, to which they pleaded no guilty and claimed trial.

To prove its case, the prosecution examined 11 witnesses. The case of the respondents was denial simplicitor as set-out in their statement under Section 313 of the Code of Criminal Procedure. They did not lead any defence.

After completing the trial, the respondents were acquitted on the ground that PW6 Vijay Singh has categorically stated that no beatings were given by Virender Singh, but he only alleged that beatings were given by respondent Gian Singh, but at the same time, he admitted the inimical relations with him, because of some litigation. His testimony made the incident doubtful, which contradicted the statement of the driver of the bus, whereas, PW7 Bishan Singh, the other alleged eye witness did not support the prosecution case at all. According to him nothing had happened in his presence. He was not declared hostile by the prosecution. If the prosecution relied upon his testimony, the case of the prosecution, all the more became doubtful. It is no where stated by the driver of the bus that the respondents were

already known to him. The identity of the accused also became very doubtful. The learned trial court placed reliance on **AIR 1979 Sc 1127** and **AIR 1980 SC 1382**, on the point of identification. Giving the benefit of reasonable doubt on the strength of the aforesaid evidence, the respondents were acquitted.

I have reappraised the evidence of the prosecution. In my opinion, the view taken by the learned trial court is reasonable and plausible as born out from the record. The prosecution has in fact failed to prove the case against the respondents beyond shadow of reasonable doubt.

It is by now well settled that in case of appeal against acquittal, the innocence of the respondent does not get diluted. The prosecution is bound to prove the case beyond reasonable doubt. On reappraisal of the evidence, my conclusions are also the same as that of the trial court. Therefore, view taken by the trial court cannot be called to be perverse. As such, the appeal merits dismissal, which is accordingly dismissed.

The bail bonds of the respondents, entered upon at any stage during the proceedings of this case stand discharged. The matter is disposed of accordingly.

July 12th, 2007. **(Surinder Singh)**
(PDS) **Judge**.